



Commonwealth of Virginia

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SCOTT COUNTY PUBLIC SERVICE AUTHORITY
FOR
NICKELSVILLE WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0087955**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Scott County Public Service Authority, regarding the Nickelsville Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters. The "303(d) report" is a subset of the "305(b) report".
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility", "Plant" or "WWTP" means the Nickelsville Wastewater Treatment Plant, located at 890 Dean Hollow Road, Nickelsville, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Nickelsville.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0087955, which was issued under the State Water Control Law and the Regulation to the Town of Nickelsville on November 1, 2018, transferred to the Scott County Public Service Authority through Minor Modification on July 30, 2019, and expires on October 31, 2023.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10, *et seq.*
16. "Scott County PSA" or "PSA" means the Scott County Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Scott County Public Service Authority is a "person" within the meaning of Va. Code § 62.1-44.3.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Scott County PSA owns and operates the WWTP. The Permit allows the PSA to discharge treated sewage and other municipal wastes from the WWTP to Copper Creek, in strict compliance with the terms and conditions of the Permit.

2. Copper Creek is located in the Tennessee-Big Sandy River Basin, Clinch-Powell Subbasin, Section 2, Class IV, Special Standards: None. This segment of Copper Creek is listed on the 303(d)/305(b) report as impaired for failure to support the recreation use due to exceedance of the water quality standard for bacteria. The *Bacteria TMDL Development Clinch River and Cove Creek Watershed, VA* was approved by EPA on April 24, 2014 and by the SWCB on June 30, 2014.
3. Through an Intermunicipal Agreement for Consolidation of Public Water and Wastewater Systems, dated June 11, 2019, the Town of Nickelsville agreed to convey ownership and operation of the Nickelsville WWTP to the Scott County PSA. On July 30, 2019, the PSA took ownership of the Facility, and the Permit was modified to reflect this transfer of ownership. On August 1, 2019, the PSA reported a July 31, 2019 unusual discharge event to DEQ and indicated that the Facility had been found to be in poor condition.
4. The Scott County PSA submitted DMRs for Outfall 001 to SWRO with data indicating that effluent limits set forth in Part I.A.1 of the Permit had been exceeded, as described by the following data results:

Parameter	Observations - DMR Monitoring Period and Relevant Reported Monitoring Results										Permit Req.*
	Aug 2019	Sep 2019	Oct 2019	Nov 2019	Dec 2019	Jan 2020	Feb 2020	Mar 2020	April 2020	May 2020	
007 DO minimum concentration (mg/L)		1.3 ¹	4.2	5.4 ²				5.9			6.0
039 Ammonia ASN average concentration (mg/L)		34.1 ¹	27.23 ¹								11
039 Ammonia ASN maximum concentration		35.7 ¹	38.5 ¹		15.8 ³						11
120 E. coli average concentration (N/CML)	1616	>2420 ¹	>2420 ¹	>2420 ²	>2420 ³	>2420 ³	>2420	>2420	>2420	>2420	126

¹ On November 20, 2019, DEQ issued Warning Letter No. W2019-11-S-1002 regarding data.

² On January 14, 2020, DEQ issued Warning Letter No. W2020-01-S-1004 regarding this data.

³ On February 26, 2020, DEQ issued Notice of Violation No. W2020-02-S-0002 regarding this data.

5. On November 20, 2019, DEQ issued WL No. W2019-11-S-1002 to the PSA, citing September 2019 and October 2019 violations of permitted effluent limits. While not cited in a WL or subsequent NOV, the August 2019 violation of the permitted effluent limit for E. coli, as noted in the table above, as well as absence of data for flow, pH,

biochemical oxygen demand, total suspended solids, dissolved oxygen and ammonia on the August 2019 DMR, are also covered by this Order.

6. On December 10, 2019, DEQ received an electronic response to the November 20, 2019 WL from the PSA. The response indicated that the PSA believed the violations of permitted effluent limits were due to remaining effects of the poor condition of the Facility at the time that the PSA took over operation from the Town of Nickelsville. The response stated that the PSA had made significant improvements since taking over the Plant, but that all of the issues would not be resolved until such time that WWTP improvements can be completed; these improvements were said to be in preliminary design at the time of response. The PSA's response addressed specific observations from the WL as follows:
 - a) The DO effluent limit violations were attributed to poor aeration and associated septic plant contents. Work was completed to reestablish aeration, remove septic contents and to reseed the activated sludge process, but the biological process did not improve enough to achieve acceptable results until approximately mid-November. The high effluent E. coli levels might have also contributed to the DO effluent limit violations.
 - b) The ammonia effluent limit violations were attributed to insufficient DO transfer due to poor aeration, which would have hindered nitrification and caused high ammonia levels.
 - c) The E. coli effluent limit violations were attributed to the disrepair of the Facility's UV process. Efforts were underway to fast-track the scope of WWTP improvements associated with this unit process.
7. On January 14, 2020, DEQ issued WL No. W2020-01-S-1004 to the PSA, citing November 2019 violations of permitted effluent limits.
8. On January 31, 2020, DEQ received an electronic response to the January 14, 2020 WL from the PSA. The response indicated that the PSA believed that the cause of the November 2019 violations of permitted effluent limits had been determined. The PSA's response addressed specific observations from the WL as follows:
 - a) The November 20, 2019 DO effluent limit violation was investigated by the PSA and it was found that a sudden drop in DO in the No. 1 aeration basin occurred at about the same time that air piping had separated. The PSA believed that the resulting low DO in the reactor led directly to the DO effluent limit violation. The air piping was repaired as soon as the PSA became aware of the issue.
 - b) The E. coli effluent limit violation was attributed to the disrepair of the Facility's UV process. The scope of WWTP improvements associated with this unit process had been approved to be put on a fast-track by the DEQ Office of Clean Water Financing and Assistance Program (CWFAP); the engineering consultant had completed the plans and specifications for the new UV system and it was anticipated that same would soon be submitted to DEQ CWFAP staff for review.
9. On February 26, 2020, DEQ issued NOV No. W2020-02-S-0002 to the PSA, citing September 2019, October 2019, November 2019, December 2019 and January 2020

violations of permitted effluent limits. Although not cited in a NOV, violations of permitted effluent limits for February 2020, March 2020, April 2020 and May 2020, as noted in the table above, are also covered by this Order.

10. On March 3, 2020, DEQ received an electronic response to the February 26, 2020 NOV from the PSA. The response indicated that the PSA had discussed the violations with the SWRO Water Compliance Manager during the previous week. The response also indicated that plans and specifications for the new UV system had been completed and were currently under review by DEQ CWFAP staff. The PSA offered to meet with DEQ to discuss violations outlined in the NOV, if necessary.
11. On March 5, 2020, DEQ issued an electronic response to the PSA. The response indicated that DEQ was awaiting CWFAP review of the submittal for the new UV system in order to determine anticipated timeframes for the proposed Facility upgrades and that a meeting between DEQ and the PSA may be desirable at a later date.
12. Va. Code § 62.1-44.5 states that “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
13. The Regulation, at 9 VAC 25-31-50, states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued no permits or certificates to the PSA for the discharge from the Nickelsville WWTP other than VPDES Permit No. VA0087955.
16. Copper Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
17. The Permit, at Part I, Section A, sets forth the final effluent parameter permit limits.
18. The Permit, at Part II, Section F, states that except in compliance with this permit, or another permit issued by the Board, it shall be unlawful to discharge into state waters sewage, industrial wastes or other wastes or any noxious or deleterious substances.
19. Part II, Section Q of the Permit states in part “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance...”

20. Based upon the monthly DMRs submitted to DEQ by the PSA, the Board concludes that the WWTP has violated Va. Code § 62.1-44.5, the Regulation 9 VAC 25-31-50, and the Permit by discharging treated and partially treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) through C(10) above.
21. In order for the Facility to complete its return to compliance, DEQ staff and representatives of the Scott County PSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Scott County Public Service Authority, and the Scott County Public Service Authority agrees to:

1. Perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the PSA for good cause shown by the PSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2020-02-S-0002, dated February 26, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the PSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The PSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The PSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by the PSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The PSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The PSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the PSA. Nevertheless, the PSA agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after the PSA has completed all of the requirements of the Order;
- b. the PSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the PSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the PSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the PSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the PSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the PSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the PSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the PSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of September, 2020.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

The Scott County Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 6/29/2020 By: C. Michael Dishman Executive Director
(Person) (Title)
Scott County Public
Service Authority

Commonwealth of Virginia
City/County of Scott

The foregoing document was signed and acknowledged before me this 29th day of

June, 2020, by C. Michael Dishman who is

Executive Director of the Scott County Public Service Authority, on behalf of

the Authority.

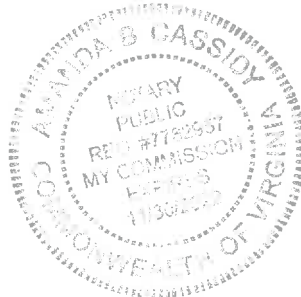
Amanda B Cassidy
Notary Public

7762957

Registration No.

My commission expires: 11/30/22

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation and the Permit, the Scott County Public Service Authority agrees to implement the following actions by the dates noted below:

1. Install new UV system and make operational.....by no later than October 15, 2020.
2. Notify DEQ in writing within ten days of completion of Item 1 above.
3. Unless otherwise specified in this Order, the Scott County Public Service Authority shall submit all requirements of Appendix A of this Order to:

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